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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,972	05/20/2004	Ronald E. Lux	59591US002	8633
32692 7590 05/17/2007 3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			EXAMINER CHEVALIER, ALICIA ANN	
			ART UNIT 1772	PAPER NUMBER
			NOTIFICATION DATE 05/17/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

LegalUSDocketing@mmm.com
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Office Action Summary

Application No.

10/849,972

Applicant(s)

LUX, RONALD E.

Examiner

Alicia Chevalier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-26 is/are pending in the application.
- 4a) Of the above claim(s) 19-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

RESPONSE TO AMENDMENT

1. Claims 1-15 and 17-26 are pending in the application, claims 19-26 are withdrawn from consideration. Claim 16 has been cancelled.
2. Amendments to the claims, filed on February 14, 2007, have been entered in the above-identified application.

REJECTIONS

3. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

Claim Rejections - 35 USC § 103

4. Claims 1-15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lux (U.S. Patent No. 5,928,070) in view of Emerson et al. (U.S. Publication No. 2003/0226318).

Lux discloses an abrasive article (*title*) comprising a web (*col. 5, lines 64-67*) and a binder (*col. 7, line 41*). The web comprising a multitude of substantially continuous three dimensionally undulated thermoplastic filaments autogenously bonding where they contact one another, wherein the filaments have a diameter in a range from 0.1 mm to 3 mm and the web has a coil web in a range from 0.1 to 3.0 kg/m² (*col. 5, lines 64-67 and col. 6, lines 7-26*). The thermoplastic filaments comprise at least one of polycaprolactum or poly(hexamethylene adipamide) (*col. 6, lines 57-61*). The article further comprises a quantity of particles affixed to the surface. The particles are in the range of 0.1 to 5 kg/m² and comprise at least one of slag,

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alumina, thermoplastic polymer, thermoset polymer, glass mullite, sand, rubber, pumice, topaz, garnet, corundum, silicon carbide, zirconia, ceramic, aluminum oxide, or diamond (*col. 8, lines 46-65*). The article further comprises a size coat. The binder and size coat comprise polyurethane (*col. 7, line 41 and col. 8, lines 39-44*).

Lux fails to disclose three-dimensional textured article with an angle between a first portion and a second portion.

Emerson discloses an abrasive article comprising a three dimensional shape with a first, second and third portion where the second and third portions are positioned at an angle of at least 45 degrees relative to the first surface (*figure 2*). The additional surface area of the three dimensional article helps sufficiently decrease surface roughness and remove the grinding marks or other small imperfections (*page 1, paragraph [0002]*). The first portion is deemed to form a tread surface, since the Applicant's specification (*page 3, paragraph [0015]*) merely indicates that the tread is the surface corresponding to the surface of first portion. Also, the second portion is deemed to be capable of contacting the front of a step. It is noted that the article need only have the ability to be "configured to contact the front of a step when the stair tread cover is placed on a step," since this limitation is only further limiting to the intended use of the article.

It would have been obvious to one of ordinary skill in the art at the time of the invention to make Lux's abrasive article three dimensional as taught by Emerson in order to help sufficiently decrease surface roughness and remove the grinding marks or other small imperfections.

The preamble "stair tread," "stairway" and "ladder rung" are deemed to be a statement with regard to the intended use and is not further limiting in so far as the structure of the product

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is concerned. In article claims, a claimed intended use must result in a *structural difference* between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. MPEP § 2111.02.

ANSWERS TO APPLICANT'S ARGUMENTS


5. Applicant's arguments in the response filed February 14, 2007 regarding the 35 U.S.C. 103(a) over Lux in view of Emerson of record have been carefully considered but are moot due to the new grounds of rejections.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


5/13/07


ALICIA CHEVALIER
PRIMARY EXAMINER


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